

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAREY POWELL, ¹	§	
	§	No. 375, 2010
Respondent Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	File No. 09-05-05TN
	§	Petition No. 09-16054
Petitioner Below-	§	
Appellee.	§	

Submitted: December 17, 2010

Decided: January 27, 2011

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

ORDER

This 27th day of January 2011, it appears to the Court that:

(1) Respondent-Below/Appellant, Carey Powell, appeals from a Family Court order that terminated Powell's parental rights in her son, Donald. Powell raises three arguments on appeal. First, Powell contends that the Family Court erred in terminating her parental rights, because she was foreseeably capable of reunification with Donald and had substantially completed her case plan elements. Second, Powell contends that the Family Court erred in terminating her parental rights, because it was not in the best interest of Donald. Third, Powell contends

¹ The Court *sua sponte* assigned pseudonyms to the parties by Order dated June 22, 2010. Supr. Ct. R. 7(d).

that the Family Court erred in failing to give proper weight to the wishes of Donald and in misinterpreting and misstating facts regarding Donald's desire to reunite with Powell. We find no merit to Powell's appeal and affirm.

(2) Approximately four years ago, the Family Court entered an *ex parte* order that granted custody of Donald and his two siblings to the Division of Family Services ("DFS"). One and one-half years later, the Family Court returned custody of Donald's siblings to Powell, but continued custody of Donald with DFS. Less than a year later, the Family Court changed the permanency goal to termination of parental rights with a concurrent goal of reunification. Shortly thereafter, DFS filed a termination of parental rights petition.

(3) The Family Court then held a hearing and concluded that DFS had proven by clear and convincing evidence that Powell failed to plan for Donald and, therefore, title 13, section 1103(a)(5) permitted the termination of Powell's parental rights.² The Family Court also concluded that it was in Donald's best interest to terminate Powell's parental rights. This appeal followed.

(4) When reviewing a Family Court's order, our standard and scope of review involves a review of the facts and law, as well as the inferences and

² Section 1103(a)(5) relevantly provides: "The parent . . . of the child . . . are not able, or have failed, to plan adequately for the child's physical needs or mental and emotional health and development, and 1 or more of the following conditions are met: a. In the case of a child in the care of the Department or a licensed agency: 1. The child has been in the care of the Department or licensed agency for a period of 1 year"

deductions made by the trial court.³ To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.⁴ To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the Family Court to assure that they are sufficiently supported by the record and are not clearly wrong.⁵ We will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.⁶ If the Family Court has correctly applied the law, our review is limited to abuse of discretion.⁷

(5) “In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries.”⁸ First, the Family Court must find a statutory basis for termination under title 13, section 1103 of the Delaware Code. Second, the Family Court is required to determine what is in the best interest of the child in light of the following factors:

- (1) the wishes of the of the child’s parents as to his custody and residential arrangements;
- (2) the wishes of the child as to his custodian and residential arrangement;

³ *Powell v. Dep’t of Serv. for Children, Youth, & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

⁴ *Powell*, 963 A.2d at 730-31; *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

⁵ *Powell*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

⁶ *Id.*

⁷ *Powell*, 963 A.2d at 731; *Solis*, 468 A.2d at 1279.

⁸ *Green v. Division of Family Services*, 992 A.2d 1237 (Del. 2010) (Table) (quoting *Shepherd v. Clemens*, 752 A.2d 533, 536–37 (Del. 2000)).

- (3) the interaction and interrelationship of the child [with other relatives within the home he lives];
- (4) the child's adjustment to his home, school and community;
- (5) the mental and physical health of all individuals involved;
- (6) past and present compliance by both parents with their rights and responsibilities to their child;
- (7) evidence of domestic violence;
- (8) the criminal history or any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

The State must show, by clear and convincing evidence, the statutory basis for termination and that the best interest analysis favors termination.⁹

(6) Powell argues that the Family Court erred in terminating her parental rights, because she was foreseeably capable of reunification with Donald and had substantially completed her case plan elements. But the relevant inquiry is “[w]hether the conditions that led to the child’s placement . . . continue to exist and there appears to be little likelihood that these conditions will be remedied at an early date which would enable the respondent to discharge parental responsibilities so that the child can be returned to the respondent in the near future.”¹⁰ The record

⁹ See *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).

¹⁰ 13 Del. C. § 1103(a)(5)a.5.A.

reveals that Powell consistently demonstrated her inability to discharge her parental responsibilities.¹¹ Therefore, the Family Court did not err.

(7) Powell also argues that the Family Court erred in terminating her parental rights, because it was not in the best interest of Donald. But the Family Court enumerated each of the best interest factors and recounted the evidence that it deemed relevant under each factor. The Family Court also weighed the testimony and made factual findings, which guided its decision. The Family Court concluded that six of the eight best interest factors favored termination of parental rights. We find no abuse of discretion by the Family Court in performing the best interest analysis.

(8) Finally, Powell argues that the Family Court erred in failing to give proper weight to the wishes of Donald and in misinterpreting and misstating facts regarding Donald's desire to reunite with Powell. As to this best interest factor, the Family Court explained:

[T]he Child does appear bonded with Mother and his siblings. The Child's wishes in regards to Mother have varied. The Child initially desired to return to Mother's care, but he wanted to stay with the [foster] family when he lived with them. The Child expressed to this Court that he would prefer to live with his Mother and siblings, but he was also open to adoption by [two foster] families. However, given the Child's young age,

¹¹ Among other things, Powell moved to Maryland without notifying DFS; irregularly visited Donald while he stayed with a foster family; was charged with offensive touching after an incident with Donald; and pled guilty to endangering the welfare of a child after Donald was found home alone.

the Child did not fully grasp the meaning of termination of parental rights or adoption. Accordingly, the court finds that . . . the Child's wishes are inconclusive regarding the termination of parental rights.

The record reveals that the Family Court properly weighed the wishes of Donald. Because Donald did not clearly and consistently declare his wishes, the Family Court did not err in finding his wishes to be "inconclusive."

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice